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State of Connecticut
SENATOR DONALD E. WILLIAMS, JR.
Twenty-ninth District
President Pro Tempore

March 24, 2011

Kimberley J. Santopietro
Executive Secretary
Department of Public Utility Control
Ten Franklin Square
New Britain, CT 06051

Re: Docket 10-12-05 *Petition of the Office of Consumer Counsel for a Declaratory Ruling that the Pending Merger of Northeast Utilities and NSTAR Requires Approval by the Connecticut Department of Public Utility Control*

Dear Secretary Santopietro:

I appreciate the decision of Commissioners DelGobbo, Vazquez Bzdyra and Ficeto to conduct a public hearing on the above cited docket. The DPUC must review the pending merger between Northeast Utilities and NStar both because it is required by state law (as described herein) and because exercising jurisdiction in such a merger – particularly one of this size and scope – makes good policy sense.

I concur with the opinion of the Office of Consumer Counsel, Petitioner, that Connecticut General Statutes §§ 16-43 and 16-47 require that the Connecticut DPUC exercise its authority to fully investigate the proposed consolidation of Northeast Utilities and NStar. Even assuming, for the sake of argument, that the referenced statutes do not mandate prior DPUC approval, the language of Connecticut General Statutes § 16-11 permits the DPUC to utilize the discretion granted therein to intervene.

C.G.S. § 16-43 provides, in pertinent part, that "(a) A public service company shall obtain the approval of the Department of Public Utility Control to directly or *indirectly* (1) merge, consolidate or make common stock with any other company…" (emphasis added). NU argues that neither of the Connecticut public service companies involved, the Connecticut Light and Power Company or Yankee Gas Services Company are merging or consolidating despite the fact that Northeast Utilities – the named party in the merger – is the parent holding company of these two entities. To accept this rationale for refusing jurisdiction places form over substance. It completely neuters the authority of the DPUC to scrutinize mergers on behalf of Connecticut's consumers.

Moreover, the argument ignores the intentional insertion by the legislature of the modifier "indirectly" in C.G.S. § 16-43. It defies logic to claim that the proposed merger of the two Massachusetts holding companies, NU and NStar, does not constitute, at a minimum, an "indirect" merger of their respective wholly owned subsidiaries, CL&P and Yankee as to NU, and NStar Electric Company and NStar Gas Company as to NStar.

Further, C.G.S. § 16-47(c) prohibits entities from becoming holding companies (or acquiring control of holding companies), which exert "control" (defined therein) over a public service company: "without first making written application to and obtaining the approval of the department...." Upon receipt of any such application, "(d) The Department of Public Utility Control *shall investigate and hold a public hearing* on the question of granting its approval with respect to any application made under subsection (b) or (c) of this section and thereafter may approve or disapprove any such application in whole or in part and upon such terms and conditions as it deems necessary or appropriate..." (emphasis added).

The proposal claims to be a merger of equals: that the name of the resulting holding company will be Northeast Utilities, that both the Hartford and Boston headquarters will remain, that the governance of CL&P and Yankee will remain the same, and thus that the threshold requirements for a C.G.S. § 16-47 investigation and public hearing are not met. The substance of the merger, however, must be strictly scrutinized to protect the interest of Connecticut consumers. For example, the facts also indicate that there will be an equal number of board members from NU and NStar, and that the Chairman of the Board, President and CEO of the merged entity will be Thomas May, who currently holds the same positions with NStar. I respectfully submit that the DPUC, in fulfillment of its statutory duties, must investigate whether these facts are an indicia of a post-merger holding company having the power to control "the management and policies of" CL&P and Yankee or NU as it now exists. C.G.S. § 16-47(a).

If the Commissioners are not persuaded that C.G.S. §§ 16-43 and 16-47 mandate an investigation and public hearing, they must be moved by the expansive language of C.G.S. § 16-11. "...The general purposes of this section and sections . . . *16-43 and 16-47* are to assure to the state of Connecticut its full powers to regulate its public service companies, *to increase the powers of the Department of Public Utility Control and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes"* (emphasis added). The legislature clearly instructed the DPUC to err on the side of caution when deciding whether it should investigate and hold public hearings prior to a consolidation that affects public service companies in this state and that potentially jeopardizes the long term supply of gas and electric to Connecticut consumers as well as the economic stability of our energy system.

In addition to the legal issues related to the Connecticut DPUC's jurisdiction to review the pending merger of Northeast Utilities (NU) and NStar, there are many policy implications of such a merger that must be considered.

The potential merger of NU and NStar is monolithic in scope. These companies serve approximately three and a half million customers located in Connecticut, Massachusetts, and

New Hampshire. This newly merged entity will include four electric and six natural gas utilities, including Connecticut Light and Power and Yankee Gas. A corporate merger of this magnitude will have significant and potentially adverse consequences for the residents of Connecticut and the other affected states. I am particularly concerned about any unfavorable effect on Connecticut's efforts to reduce energy costs for businesses and families and whether the result of the merger will be less competition, less accountability, higher prices and fewer jobs in the state of Connecticut.

To date, approximately sixteen different organizations have filed as interveners in the NU/NStar merger in Massachusetts, including environmental groups, low-income advocates, the unions and industry groups. In response to the concerns of those Massachusetts groups opposed to the merger, the Massachusetts Department of Public Utilities has revised its standard for approval of utility mergers. The previous standard required that a utility merger cause no net harm to Massachusetts consumers. The new standard is that the merger must provide a net benefit to the Massachusetts energy community. Given this enhanced standard for review in Massachusetts, it is certain that in order to be approved the merger will be structured to benefit Massachusetts consumers. What about Connecticut consumers? Where is their representation in evaluating this merger that will create New England's largest utility holding company? Will the benefits to Massachusetts come at the expense of Connecticut ratepayers? Given the importance of this merger and the number of stakeholders affected, it is logical that the Connecticut DPUC and other affected parties ought to be afforded a similar opportunity to review it.

Mergers and acquisitions in the utility sector are becoming more commonplace. One reason for the increase in mergers is the repeal of the Public Utilities Holding Company Act (PUHCA) in the Energy Policy Act of 2005 under the Bush Administration. PUHCA was passed in the 1930s and limited the transactions that holding companies and subsidiaries could be involved in – specifically, it prevented companies, other than utilities, from acquiring utilities. A January 2011 report by Standard & Poor's cited the Duke Energy Corp. and Progress Energy Inc. merger as a sign that the pace of merger activity may increase. The same report also indicated that regulatory approvals are occurring in an expedited manner – during 2009 and 2010, merger approvals were occurring in 12 months or less on average. This is an alarming trend given that there is no evidence to suggest that larger utilities provide better service or lower consumer prices. There is, however, a significant decline in accountability that is absolutely contrary to Connecticut's statutory directive "to promote local control of the public service companies of this state."

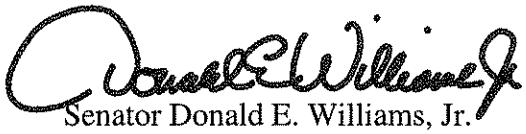
I am not convinced that this merger will help to lower costs for CL&P customers and it may well have the opposite effect – decreased competition in the wholesale market that could lead to higher costs for Connecticut's ratepayers. Further, our competitive retail supplier market has finally started to flourish in Connecticut. As of December 2010, 38 percent of customers have chosen their own electric supplier and have seen actual savings on their electric bills. What impact will this merger have on the retail competitive supplier market and people's ability to choose their electric supplier?

With Connecticut's unemployment rate at 9 percent and our economy still suffering from the worst recession since the Great Depression, laying off employees and transferring jobs out of

state – another likely outcome of the corporate merger – is the wrong step to take. We must learn from the mergers in other sectors of our economy that have eliminated thousands of jobs that have never been recovered. Given the magnitude of the impact that this merger will have on ratepayers, I strongly encourage the DPUC to exercise its jurisdiction to fully review the pending merger of Northeast Utilities (NU) and NStar.

Thank you for your time and consideration.

Sincerely,



Senator Donald E. Williams, Jr.
Senate President Pro Tempore